contra. Statements by numerous text writers that "a purchaser is affected with notice of recitals in conveyances forming his chain of title and material thereto, whether recorded or not" are not well supported by the authorities cited therefor. 1 JONES, MORTGAGES (7th ed.) sec. 574; 39 CYC. 1715. The cases cited are cases where the instrument containing the recital was recorded. See *Hancock* v. *McAvoy,* 151 Pa. 439; *White* v. *Foster,* 102 Mass. 375. But *Baker* v. *Mather, supra,* sustains such a broad statement and possibly *Stidham* v. *Mathews,* 29 Ark. 650. It is clear that the recital of a mortgage in a *recorded* deed charges that grantee and subsequent mortgagee under him with notice of such mortgage, although it (the prior mortgage) is unrecorded. *Taylor* v. *Mitchell,* 58 Kans. 194; *Sweet* v. *Henry,* 175 N. Y. 268. The ultimate question in the principal case is, therefore, whether or not a mortgagee or grantee is charged with notice of recitals in *unrecorded* instruments in the chain of title. Cases answering in the affirmative thereby impose upon every purchaser or mortgagee of land the duty of employing a lawyer or title company to examine the title and if a deed in the chain of title be missing, require its production. It seems that the principal case is more in harmony with the true spirit of the recording laws in holding that the grantee or mortgagee is to be charged with constructive notice of only those instruments in his chain of title which were on record at the time he took his deed or mortgage. As suggested by the court in the principal case, the contrary view is reasonable in England where the title deeds are passed on to each successive grantee and where it is held, as a result, that the grantee has constructive notice of the contents of all the title deeds in the chain. Berwick v. Price, [1905] 1 Ch. 632. But under our system of conveyancing, says the court, the reason for such a rule does not exist.

WATERS AND WATERCOURSES—POLLUTION OF—SUIT BY NONRIPARIAN USER —An incorporated city was authorized by law to take water from a stream for distribution among its inhabitants. One of the consumers sued an upstream riparian owner for damages resulting from alleged pollution of the water. *Held,* assuming the defendant owed a duty to the city as a lower riparian owner, the plaintiff failed to state a cause of action, as he was not such an owner nor was there privity of contract between him and defendant, nor does it appear that the defendant as a riparian owner owed a general duty to the public. *Egyptian Lacquer Mfg. Co.* v. *Chemical Co. of America,* (N. J., 1919) 108 Atl. 249.

In *Baum* v. *Somerville Water Co.,* 84 N. J. Law 611, 46 L. R. A. (N.S.) 966, it was held the agreement of a water company to furnish water to a municipality which the latter delivered to the plaintiff did not impose on the company a duty to the public to furnish water at all times under a sufficient pressure to extinguish fires. This case is in accord with the weight of authority; however there are a few cases holding that water companies owe a direct duty to property owners and are liable either in tort or as third party beneficiaries. See *Mugge* v. *Tampa Waterworks Co.,* 6 L. R. A. (N. S.) 1171, 42 So. 81. *Fisher* v. *Greensboro Water Supply Co.,* 128 N. C. 375; *Guardian*

Trust and Deposit Co. v. *Fisher,* 200 U. S. 57; 3 MICH. L. REV. 442; 4 MICH. L. REV. 540; 5 MICH. L. REV. 362. Although these cases give the consumer a right of action for failure of the supply against the water company, as a beneficiary of the contract with the municipality, or under a general duty to the public undertaken by the water company it is settled that a purchaser of the water can not bring an action based on the negligent interference with the water company's water rights. This follows from the rule that there is no right of action where the duty of another person to exercise care intervened between the neglect of the defendant and the injury to the plaintiff. There is ample authority to the effect that a city or water company authorized by statute to take water from a stream for municipal uses may maintain an action or bill for interference with the supply by upstream owners who have not previously acquired the right of interference by prescription. *City of Baltimore* v. *Warren Mfg. Co.,* 59 Md. 96; *City of Springfield* v. *Fullmer,* 7 Utah 450, 27 Pac. 577; *Sprague* v. *Door,* 185 Mass. 10; *Martin* v. *Gleason,* 139 Mass. 183; *Indianapolis Water Co.* v. *American Strawboard Co.,* 53 Fed. 970. In reference to the right to divert waters to non-riparian lands unaided by statute see 12 MICH. L. REV. 304.

WILLS—AWKWARDLY WORDED CODICIL CONSTRUED.—Under the original will the absolute title to the property would go to the testator's wife. Testator, by codicil, provided that all his property standing in his name should go to his son, except certain property which came to him through his wife, which was to go to his wife's estate. Another provision added "this codicil shall only be deemed valid in event that my wife * * * should die before my said wife makes a will after my death, otherwise it is to be treated as nugatory and as non-existent." Said wife died before testator. *Held,* valid, and son takes such property. *In re Werlich's Will,* (1920) 179 N. Y. S. 692.

Upon first reading this codicil it seems that it should become valid only upon one contingency,—namely, if the testator's wife dies, without making a will, *after his death.* So, at first glance, it appears the court is going directly contrary to the express words of the codicil, in holding it is valid if the wife dies before the testator. It must be admitted that the codicil was very awkwardly constructed, and that the testator's meaning was beclouded. The case is interesting in showing how far the courts will go to carry out the real intention of the testator, even to the extent of ignoring certain phrases and provisions. In effect, this court totally ignored the phrase, *"after my death,"* as much as if it had been omitted by the testator. Upon consideration of the whole will and the codicil combined, the testator's intention clearly appears to have been that the property should pass to his son, as he provided by his codicil, unless his wife made some other testamentary disposition of it *after his death.* His wife having preceded him in death, the codicil became effective according to the testator's intention, and the property passes to his son. The court is not bound to a literal and strict interpretation of the words used. *McMurtrie* v. *McMurtrie,* 15 N. J. L. 276. Where the intention of the testator is manifest from the whole will and surrounding circumstances, but